

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

**Clarence I Allen and
Shondah T. Allen**

Case No. 10-81038- -
Chapter 13

Soc. Sec. Nos. xxx-xx-9054 & xxx-xx-2653
Mailing Address: 912 Forge Road, , Durham, NC 27713-
Debtors.

MOTION TO INCUR INDEBTEDNESS

NOW COME the Debtors, by and through the undersigned attorney, pursuant the Confirmation Order and local rule and custom, requesting permission to incur indebtedness, and also requesting approval of an attorney fee, and in support thereof, shows unto the Court as follows:

1. Debtors have filed a petition for relief in bankruptcy under Chapter 13 of the United States Code on June 14, 2010.
2. The Debtors have been approved by **Tap Commercial, Inc.** to incur indebtedness.
3. This motion is being made so that the Debtors may incur indebtedness to purchase certain real property (hereinafter referred to as "said property") located in Durham County in the State of North Carolina, and known as 606 United Drive Durham NC 27707 and more particularly described as set forth on Exhibit "A" attached herewith.
4. On May 16, 2011, the Debtors entered into a contract to purchase said property for a price of \$612,000.00. Attached as Exhibit B is a copy of the Offer to Purchase and Contract.
5. The new loan shall not exceed the following terms:
 - a. Amount of the new loan: \$625,000.00
 - b. Interest rate for the new loan: 10.5%
 - c. Monthly payment for the new loan: \$5,469.00
 - d. Length of the new loan: 360 months
 - e. Other Terms: 5 Year Balloon
6. A copy of the preliminary Settlement Statement for the Closing of Title, showing projected adjustments, disbursements and net proceeds, is attached herewith as Exhibit C.
7. The Debtors will be able to afford this new loan for the following reasons:

- a. This is paid by the business.
8. That the Debtors believe the proposed to be in the best interest of the Debtors to incur indebtedness for the following reason(s):
 - a. Allows Debtor to continue running his business from this address.
9. The proposed indebtedness will not affect the ability of the Debtors to successfully complete the Chapter 13 plan.
10. The proposed indebtedness does not adversely affect the interests of the bankruptcy estate.
11. That \$250.00 is the reasonable value of the services provided and to be provided by the undersigned attorney for counseling the Debtors concerning the proposed new loan, gathering information necessary to draft this application, drafting and processing this motion and the proposed order, interfacing with the closing attorney, the realtor, the mortgage broker, the seller(s) and the financier for the purpose of answering questions and concerns regarding the effect of the bankruptcy on the new indebtedness, extra follow-up to make sure that the ensuing order is obtained and transmitted to the Debtors the closing attorney in a timely fashion to avoid delaying unnecessarily the projected closing of the loan. It is anticipated, based on many past experiences, that it will take approximately 2 hours of attorney time to attend to said details. The \$250.00 also takes into account the **substantial risk** inherent in all loan situations that undersigned attorney will perform these services and not get paid because, for one reason or another, the loan falls through.

WHEREFORE, the Debtors respectfully pray that the Court allow the Debtors to incur said indebtedness, approve and direct payment out of the proceeds of such loan a reasonable attorney fee or in the event that the new loan falls through, allow payment of the attorney fee through the Debtors' Chapter 13 plan , and grant such other and further relief as to this Court seems just and proper.

Dated: June 24, 2011

LAW OFFICES OF JOHN T. ORCUTT, P.C.

/s Edward Boltz
Edward Boltz
North Carolina State Bar No.:23003
6616-203 Six Forks Road
Raleigh, N.C. 27615
(919) 847-9750

(Allen 10-81038 Purchase business.wpd revised 11/5/09)

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CERTIFICATE OF SERVICE

I, Renee Nolte, of the Law Offices of John T. Orcutt, P.C., certify, under penalty of perjury, that I am, and at all times hereinafter mentioned was, more than eighteen (18) years of age, and that on June 24, 2011, I served copies of the **MOTION TO INCUR INDEBTEDNESS**, electronically or when unable by regular U.S. mail, upon the following parties (names and addresses):

Richard M. Hutson, II
Chapter 13 Trustee

Samuel Roberti
Closing Attorney
100 E. Parrish Street
Durham, NC 27701-

Michael West
Bankruptcy Administrator

Stephen L. Smith
Realtor
C/O A. C. L. Mortgage Services
146 N. Fieldcrest Road, Ste A
Eden, NC 27288-

Clarence I Allen & Shondah T. Allen
912 Forge Road
Durham, NC 27713-

Mechanic's & Farmers Bank
Seller(s)
Post Office Box 1932
Durham, NC 27702

Tim Anderson
Mortgage Broker
C/O Tap Commercial, Inc.
297 Kingsbury Grade, Ste 100
Stateline, NV 89449-4470

Tap Commercial, Inc.
Financier
297 Kingsbury Grade
Suite 100
Stateline, NV 89449-

All creditors with duly filed claims as indicated on the Trustee's Report of Filed Claims.

/s Renee Nolte
Renee Nolte